

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KENTRELL D. WELCH,

Plaintiff,

Case No. 3:20-cv-00079-MMD-CLB

v.

ISIRIDO BACA et al.,

Defendants.

ORDER

This action began with a pro se civil rights complaint filed pursuant to 42 U.S.C. § 1983 by a state prisoner. Plaintiff has submitted an application to proceed *in forma pauperis*. (ECF No. 1). Based on the financial information provided, the Court finds that Plaintiff is unable to prepay the full filing fee in this matter.

The Court entered an order on February 22, 2021, reinstating the original complaint and screening order in this case. (ECF No. 106). That order imposed a 90-day stay. (*Id.*) The Court held a global settlement conference with the parties, but the parties did not reach an agreement. (ECF Nos. 113, 119). This case will proceed on the normal litigation track.

Despite the Court denying Plaintiff's previous request for counsel, Plaintiff filed another motion for appointment of counsel. (ECF Nos. 97, 107). A litigant does not have a constitutional right to appointed counsel in 42 U.S.C. § 1983 civil rights claims. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). Pursuant to 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” However, the court will appoint counsel for indigent civil litigants only in “exceptional circumstances.” *Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (§ 1983 action). “When determining whether ‘exceptional circumstances’ exist, a court must consider ‘the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved.’” *Id.* “Neither of these considerations is dispositive and instead must be viewed together.” *Id.* In the instant

1 case, the Court does not find exceptional circumstances that warrant the appointment of
2 counsel. The Court denies the motion for appointment of counsel without prejudice.

3 For the foregoing reasons, **IT IS ORDERED** that:

4 1. Plaintiff's application to proceed *in forma pauperis* (ECF No. 1) is
5 **GRANTED**. Plaintiff shall not be required to pay an initial installment of the filing fee. In
6 the event that this action is dismissed, the full filing fee must still be paid pursuant to 28
7 U.S.C. § 1915(b)(2).

8 2. The movant herein is permitted to maintain this action to conclusion without
9 the necessity of prepayment of any additional fees or costs or the giving of security
10 therefor. This order granting leave to proceed *in forma pauperis* shall not extend to the
11 issuance and/or service of subpoenas at government expense.

12 3. Pursuant to 28 U.S.C. § 1915, as amended by the Prison Litigation Reform
13 Act, the Nevada Department of Corrections will forward payments from the account of
14 **Kentrell D. Welch, #1030777** to the Clerk of the United States District Court, District of
15 Nevada, 20% of the preceding month's deposits (in months that the account exceeds
16 \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court
17 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will
18 send a copy of this order to the attention of **Chief of Inmate Services for the Nevada**
19 **Department of Corrections**, P.O. Box 7011, Carson City, NV 89702.

20 4. The Clerk of the Court shall electronically **SERVE** a copy of this order and
21 a copy of Plaintiff's complaint (ECF No. 34) on the Office of the Attorney General of the
22 State of Nevada by adding the Attorney General of the State of Nevada to the docket
23 sheet. This does not indicate acceptance of service.

24 5. Service must be perfected within ninety (90) days from the date of this order
25 pursuant to Fed. R. Civ. P. 4(m).

26 6. Subject to the findings of the screening order and follow up order (ECF Nos.
27 33, 106), within twenty-one (21) days of the date of entry of this order, the Attorney
28 General's Office shall file a notice advising the Court and Plaintiff of: (a) the names of the

1 defendants for whom it accepts service; (b) the names of the defendants for whom it does
2 not accept service, and (c) the names of the defendants for whom it is filing the last-
3 known-address information under seal. As to any of the named defendants for whom the
4 Attorney General's Office cannot accept service, the Office shall file, under seal, but shall
5 not serve the inmate Plaintiff the last known address(es) of those defendant(s) for whom
6 it has such information. If the last known address of the defendant(s) is a post office box,
7 the Attorney General's Office shall attempt to obtain and provide the last known physical
8 address(es).

9 7. If service cannot be accepted for any of the named defendant(s), Plaintiff
10 shall file a motion identifying the unserved defendant(s), requesting issuance of a
11 summons, and specifying a full name and address for the defendant(s). For the
12 defendant(s) as to which the Attorney General has not provided last-known-address
13 information, Plaintiff shall provide the full name and address for the defendant(s).

14 8. If the Attorney General accepts service of process for any named
15 defendant(s), such defendant(s) shall file and serve an answer or other response to the
16 complaint (ECF No. 34) within sixty (60) days from the date of this order.

17 9. Plaintiff shall serve upon defendant(s) or, if an appearance has been
18 entered by counsel, upon their attorney(s), a copy of every pleading, motion or other
19 document submitted for consideration by the Court. If Plaintiff electronically files a
20 document with the Court's electronic-filing system, no certificate of service is required.
21 Fed. R. Civ. P. 5(d)(1)(B); Nev. Loc. R. IC 4-1(b); Nev. Loc. R. 5-1. However, if Plaintiff
22 mails the document to the Court, Plaintiff shall include with the original document
23 submitted for filing a certificate stating the date that a true and correct copy of the
24 document was mailed to the defendants or counsel for the defendants. If counsel has
25 entered a notice of appearance, Plaintiff shall direct service to the individual attorney
26 named in the notice of appearance, at the physical or electronic address stated therein.
27 The Court may disregard any document received by a district judge or magistrate judge
28 which has not been filed with the Clerk, and any document received by a district judge,

1 magistrate judge, or the Clerk which fails to include a certificate showing proper service
2 when required.

3 10. This case is no longer stayed.

4 11. The motion for appointment of counsel (ECF No. 107) is denied without
5 prejudice.

6 DATED THIS 7th day of July 2021.

7 
8 _____
9 UNITED STATES MAGISTRATE JUDGE

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28